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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,240	08/04/2008	Gunther Van der Borcht	62367-393386	1672

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EXAMINER

GETZOW, SCOTT M

ART UNIT

PAPER NUMBER

3762

NOTIFICATION DATE

DELIVERY MODE

03/14/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/582,240

**Applicant(s)**

VAN DER BORGHET ET AL

**Examiner**

Scott M. Getzow

**Art Unit**

3762

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 1/14/11.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 10-12, 14, 22-24, 27-31, 33, 37-42, 45-52, 55, 56, 59, 61 and 64-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-12, 14, 22-24, 27-31, 33, 37-42, 45-52, 55, 56, 59, 61 and 64-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-502)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 103***

1. Claims 1-8,10-12,14,22-24,27-31,33,37-42,45-52,55,56,59,61,64-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zilberman et al (5,824,022).

See the office action of 10/14/10 for a discussion of the teachings of Zilberman. Re claim 39, Zilberman is considered to teach a first housing containing a signal processor and which receives signals from a microphone (see figure 5, element 32), a second housing configured to removably connect to the first housing (see figure 2, element 34). As taught in column 5, lines 15+ of Zilberman, the assembly 34 contains 'some of the electronics' of the cochlear stimulation system. Further, the assembly is 'affixed' to the housing 32, which is considered the first housing. Applicant argues that the term 'affixed' does not allow for the assembly 34 to be removed from the first housing. However, the term 'affix' is defined as 'to attach physically' or 'to attach in any way', see Webster's Ninth New Collegiate Dictionary, 1987. Thus, the term 'affix' does not necessarily imply that the assembly cannot ever be removed. Further, in order to make repairs on the assembly, if needed, it would likely have to be removed, thus having it removably connected to the first housing 32 would be considered to be either implicit in its design or an obvious design choice that would not be unpredictable in its result. Still further, claim 39 calls for a user interface that is on the second housing. As shown in figure 2 of Zilberman, the first housing 32 has various controls 40,42,46 which enable control of the circuitry inside the housing. To place such controls on the assembly 34 instead of the first housing 32 would have been obvious in that no unexpected result would occur from such placement. The placement of the controls 40,42,46 on the

assembly 34 can be considered an obvious design choice since only minor obvious modifications would need to be done to put the controls on the assembly 34 to control the function of the signal processor. Re claim 1, applicant sets forth a plurality of second housings. To have a 'backup' second housing in case another second housing became inoperative is considered to be obvious in that such would yield a predictable result. Thus, to have two assemblies 34, would provide a safety feature to enable a backup if one of them failed. Re claim 51, as mentioned supra, Zilberman teaches first and second housings. Further, the RCU 50, shown in figure 4, can be considered to be the remote module having an interface. As mentioned in Zilberman, the assembly 34 can have circuitry inside, such as an antenna, and to make the RCU communicate with the circuitry inside the assembly 34 would not be unpredictable, but would rather be an obvious design choice. Re claim 65, figure 2 of Zilberman shows a first component 32 which can be worn behind the ear of a patient, and a second component 34 which, as stated above, can be considered to be removably connected to the first component 32. Further, as mentioned above, the user interface can be considered to be the controls 40,42,46 which can be located on the second component 34 as a matter of design choice. Re claim 66, figure 2 shows a first component 32, and a second component 34 that can be removably connected to the first component, and a user interface, as mentioned above. Further, first component 32 includes a battery 107. To place the battery inside the second component 34 instead of in the first component would be a design choice with predictable results. That is, only minor obvious modifications would need to be done to the second component 34 to enable battery power to power the

processing circuitry of the first component 32. Further, the dependent claims are considered to be encompassed by the teachings of Zilberman, as discussed above and in the previous office action. For example, to use an electrically conducting lead that is connected to a remote module would be obvious. For example, in place of the antenna 52 of Zilberman, one could use a lead without producing any unexpected results. The use of a lead in place of a wireless connection would be considered an obvious design choice. Also, re new claim 67, the visual display device can be considered the LED display 46, which can be located on the assembly 34, as indicated above.

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Getzow whose telephone number is (571) 272-4946. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Niketa Patel can be reached on (571) 272-4156. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott M. Getzow/  
Primary Examiner, Art Unit 3762